



Order 2004-1-9
Served: January 16, 2004

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of January, 2004

Essential Air Service at

MERCED, CALIFORNIA

Under 49 U.S.C. 41731 *et seq.*

DOCKET OST-1998-3521

ORDER REQUESTING PROPOSALS

Summary

By this order, the Department is requesting proposals from carriers interested in providing essential air service at Merced, California, for a new two-year period, with or without subsidy. The order reflects new, streamlined procedures for processing such proposals.

Background

By Order 2001-10-9, October 18, 2001, the Department selected Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide subsidized essential air service at Merced, California, through October 31, 2003. Under that order, Scenic operates 14 nonstop round trips a week with 19-seat Beech 1900 aircraft. In response to the terrorist attacks, many subsidized carriers were faced with less revenue yet were not allowed to reduce service.¹ Because of this, the Department issued Order 2002-5-20, May 18, 2002, which increased all essential air service subsidy rates across the board, including Scenic's rate, on a retroactive basis. Under the terms of that order, Scenic's rates were adjusted upward to \$1,031,224 for the first year and \$844,479 for the second year.

Request for Proposals

Under normal procedures when nearing the end of a subsidy rate term, absent any expected interest from carriers other than the incumbent, we have negotiated a new subsidy rate with the incumbent and issued an order tentatively reselecting it for a new rate term at the agreed rate, while directing other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in

¹ See Order 2002-2-13 for a full description of our response to the terrorist attacks.

response to the show-cause order. If any such proposals are filed, we process them as a competitive case.

In this instance, however, we expect that other carriers will be interested in providing service at Merced. In order to give the community and ourselves a full array of service/subsidy options for consideration, we have decided to forgo negotiating new rates with Scenic at this time and instead proceed directly to a competitive carrier-selection case by requesting proposals from all interested carriers, including the incumbent.

Carriers interested in filing proposals, with or without subsidy requests, should file them within 30 days of the date of service of this order. At the end of that period, our staff will docket the proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. Shortly afterwards, we will provide a summary of the proposals to the community and ask them to submit their final comments. We urge the community to rank its preferences for the various options. We will give full consideration to all proposals that are timely filed.²

New Procedures

The preceding paragraph reflects streamlined carrier-selection procedures that we have introduced for the essential air service program generally. In the past, we have accepted *initial* carrier proposals, reviewed them, and then negotiated *final* proposals with each applicant before formally presenting the proposals to the community and asking for their final comments. We had found that a two-step process was generally necessary because, in most cases, the incumbent carrier was the only one interested. As a result, we were unable to rely on competition to discipline carrier subsidy requests, and the community had to wait on a protracted selection process. More recently, however, we have noticed that most orders requesting essential air service have drawn proposals from at least two carriers, and sometimes more. Under the circumstances, we expect that competition among multiple carriers will ensure reasonable subsidy requests, obviate the need for rate negotiations, and allow us to streamline the carrier selection process.

Consequently, interested carriers should prepare their proposals with every expectation that their initial proposals will also be their *final* and *only* proposals.³ We retain the discretion to further negotiate proposals with carriers when we deem it desirable; in such cases, of course, we will give all applicants the same opportunity. For example, we anticipate that we will continue to negotiate rates in cases where there is only a single interested carrier, as is frequently the situation in Alaska. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and resolicit a new round of proposals. However, we anticipate that negotiation or rejection will remain only occasional exceptions to the rule.

² In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not proceed with the carrier-selection case. Instead, we simply rely on that carrier's subsidy-free service as proposed.

³ For this reason, we will allow carriers 30 days to submit their proposals, rather than just 20 as in the past. Also, it is incumbent on each carrier to discuss with the community its preferences before it submits its proposals.

We are hereby providing interested carriers with some basic information to serve as guidance when they prepare their proposals, but we will not prescribe a precise format for their proposals. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. The applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, passengers, revenues and expenses. Carriers' proposals must specify weekly service frequency, completion factor, intermediate stops (if any), whether or not upline service is contemplated, aircraft type, and level of annual subsidy. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected community and the Department. We do not anticipate any change in our selection criteria, or in the general provisions governing subsidy payments for essential air service.⁴

With respect to service proposals at Merced, we note that Order 2001-10-9 selected Scenic to provide only 14 round trips a week between Merced and Las Vegas. We encourage proposals that meet the needs of the community in an efficient manner. Carriers are also welcome to propose more than one service option, if they choose, and they need not limit themselves in any way if they envision other, potentially more attractive service possibilities -- different hubs or smaller aircraft, for example -- with subsidy requirements that remain competitive.

Service and Traffic History

Scenic Airlines inaugurated service to Merced on November 1, 2001, in response to our selection. During the year ended October 2003, the most recent 12-month period for which traffic data are available, Merced averaged 21 passenger enplanements per day.⁵

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁶ Consequently, all carriers receiving Federal subsidy for essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. Because the

⁴ In selecting a carrier to provide subsidized essential air service, 49 U.S.C. 41733(c)(1) directs us to consider four factors: (1) service reliability; (2) contractual and marketing arrangements with a larger carrier at the hub; (3) interline arrangements with a larger carrier at the hub; and (4) community views. In addition, we have always given weight to the applicants' relative subsidy requirements. Appendix C contains the general provisions governing essential air service; as in the past, these provisions will be included in the selection order as part of the Department's authorization of subsidy for the selected service.

⁵ See Appendix B for historical traffic. Average enplanements per day are based on 365 days per year.

⁶ The regulations applicable to these areas are: (1) 49 CFR Part 20 -- New restrictions on lobbying; (2) 49 CFR Part 21 -- Nondiscrimination in federally-assisted programs of the Department of Transportation -- Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 -- Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 -- Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 -- Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

Department is prohibited from paying subsidy to carriers that do not submit these documents, all carriers that plan to submit proposals involving subsidy should be aware that the selected carrier will be required to complete the required certifications. Interested carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-1053.⁷

Community and State Comments

The community and state are welcome to submit comments at any time. We encourage prospective applicants to contact the community before they submit their proposals because their proposals are final. As noted earlier, we will provide a copy of the proposals to the civic parties and ask them to submit their final comments shortly after the end of the 30-day period for carrier proposals.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We request that carriers interested in providing essential air service at Merced, California, submit their proposals, with or without subsidy requests, no later than 30 days after the date of service of this order. The proposals should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street S.W., Washington, DC 20590, with the title "Proposal to Provide Essential Air Service at Merced, California, Docket 3521";⁸
2. This docket will remain open until further order of the Department; and
3. We will serve copies of this order on the mayor and airport manager of Merced, California, Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, and the carriers shown in Appendix D.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
And International Affairs, X-1

(SEAL)

*An electronic version of this document is available
on the World Wide Web at <http://dms.dot.gov>*

⁷ The certifications are also available on the web at <http://ostpxweb.dot.gov/aviation/index.html>.

⁸ Questions regarding filings in response to this order may be directed to Kevin Adams at (202) 366-1047.

Appendix A



Mileages

MCE-SFO	105
MCE-LAX	259
MCE-FAT	55
MCE-LAS	309

Appendix B

Origin Destination Passengers at Merced, California

<u>Quarter</u>	
QE 1/31/02	1,508
QE 4/31/02	3,549
QE 7/31/02	4,663
QE 10/31/02	4,535
QE 1/31/03	3,651
QE 4/31/03	3,767
QE 7/31/03	3,927
QE 10/31/03	3,893

General Terms and Conditions for Essential Air Service

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plans outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with the order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the stipulated amounts or at the stipulated service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

California Service List

Air Nevada Airlines, Inc.
Air Vegas, Inc.
Alpha Air
American Eagle
Amerijet International, Inc.
Arizona Express Airlines
Arizona Pacific Airlines, Inc.
Aviation Services West, Inc.
Balter Worldwide Corporation
Barken International, Inc.
Continental Express, Inc.
Corporate Airlines, Inc.
Delta Connection
Executive Airlines, Inc.
Grand Airways, Inc.
Gunnell Aviation, Inc.
Harbor Airlines, Inc.
Hillside Aviation
Kenmore Air Harbor, Inc.
Las Vegas Airlines, Inc.
Martin Aviation, Inc.
Mesa Airlines, Inc.
Midwest Express Airlines, Inc.
Northern Tier Airlines, Inc.
Papillon Airways, Inc.
Patterson Aviation Company
Scenic Airlines, Inc.
Sierra Nevada Airways, Inc.
Skyrunners Corporation.
SkyWest Airlines, Inc.
StatesWest Airlines, Inc.
Sun Pacific Airlines, Inc.
Trans Executive Airlines of Hawaii, Inc.
Trans World Express, Inc.
United Express
USAir, Inc.
West Air Charter
WestAir Commuter Airlines, Inc.
Westward Airways, Inc.
Wings West Airlines, Inc.
World Airways, Inc.

Ken Bannon
Moise Berger
Grecorio Salas Calvo, Jr.
Lisa Cosenza
Doug Franklin
E.B. Freeman
Douglas Gumula
Ben Harrison
A. Edward Jenner
Colleen O'Day
Lee Mason
Richard E. Perez
Andy Pike
Larry Tiffin
Mike Woodward